MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

RANDY SPALDING,

Respondent

v.

STEWART TITLE GUARANTY COMPANY.

Appellant

DOCKET NUMBER WD76369

DATE: September 23, 2014

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Michael W. Manners, Judge

Appellate Judges:

Division Two
Victor C. Howard, P.J., James Edward Welsh, and Anthony Rex Gabbert, JJ.

Attorneys:

John Coghlan, Kansas City, MO	Counsel for Appellant
Justin Nichols, Kansas City, MO	Co-Counsel for Appellant
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Attorneys:

David Marcus, Kansas City, MO	Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

RANDY SPALDING, Respondent, v. STEWART TITLE GUARANTY COMPANY, Appellant

WD76369 **Jackson County**

Before Division Two Judges: Howard, P.J., Welsh, and Gabbert, JJ.

Stewart Title Guaranty Company appeals the circuit court's judgment in favor of Randy Spalding after a jury trial on his claims for breach of contract and vexatious refusal to pay in regard to a title insurance policy. Stewart Title contends that the circuit court erred: (1) in denying its motions for directed verdict and judgment notwithstanding the verdict because the suit on the title insurance policy was time barred under the five year statute of limitations for breach of contract, (2) in refusing to give its proposed instruction concerning its statute of limitations defense, (3) in denying its motions for directed verdict and judgment notwithstanding the verdict because Spalding failed to make a submissible case as to the existence and amount of the damages for the breach of contract, (4) in admitting evidence from appraiser Brian Reardon regarding the damages sustained from the title defect under the policy, and (5) in giving Instruction No. 7, which defined the measure of damages in accordance with the highest and best use of the property. Further, Stewart Title asserts that, if this court reverses the circuit court's judgment regarding the breach of contract claim, then the circuit court necessarily erred in failing to grant Stewart Title's motions for directed verdict, judgment notwithstanding the verdict, or new trial on the vexatious refusal to pay claim.

Affirmed

Division Two holds:

(1) Regardless of whether the five-year or ten-year statute of limitations applies in this case, the facts established that Spalding filed his suit against Stewart Title less than five years after Stewart Title breached the title insurance policy, giving rise to the cause of action. Spalding Land Company (SLC) had no reason to sue Stewart Title until, July 3, 2007, when Stewart Title allegedly failed or refused to adequately compensate SLC for "the actual monetary loss or damage" as required under the title insurance policy. Spalding filed his petition with the circuit court asserting its claim against Stewart Title for breach of contract on June 9, 2011. Thus, Spalding's claims would have been timely under both the five and ten-year statute of limitations in that it was filed less than five years after Stewart Title's letter of July 3, 2007. Moreover, the circuit court did not err in refusing to submit Stewart Title's instruction regarding its statute of limitations defense. Even if the five-year statute of limitations applied in this case, the statute of limitations did not begin to run when Spalding became aware of the possible title defect; rather, it began to run when Stewart Title failed or refused to adequately compensate Spalding for "the actual monetary loss or damage" as required under the title insurance policy.

(2) Given the testimony of Spalding's expert, Spalding made a submissible case as to the existence and amount of claimed damages for breach of contract. Any weakness in the factual

underpinnings of the expert's opinion or in the expert's knowledge goes to the weight that testimony should be given and not its admissibility. Stewart Title had the opportunity and did cross-examine the expert about his valuation testimony. The circuit court, therefore, did not err in denying Stewart Title's motions for directed verdict and judgment notwithstanding the verdict. Moreover, the circuit court did not err in admitting the expert's testimony regarding the damages sustained from the title defect under the policy.

(3) Although not a model of simplicity, Instruction No. 7 was an accurate statement of the law, and it did not mislead nor confuse a jury. Based upon the evidence presented, it was for the jury to determine fair market value, which was defined as "the price that the insured property in question would bring when offered for sale by one willing but not obliged to sell it and when bought by one willing or desirous to purchase it but who is not compelled to do so." In making its determination about fair market value, the instruction merely allowed the jury, but did not require it, to consider and weigh the evidence concerning the highest and best use of the property. The circuit court, therefore, did not err in giving the jury Instruction No. 7 and in denying Stewart Title's motion for new trial.

(4) We need not address Stewart Title's last point on appeal, in which it asserted that, if we reverse the circuit court's judgment regarding the breach of contract claim, then we would necessarily have to reverse the circuit court's judgment on the vexatious refusal to pay claim. As we are affirming the circuit court's judgment on the breach of contract claim, it is unnecessary for us to consider this point.

Opinion by James Edward Welsh, Judge September 23, 2014

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